1959

L. W. Armwood and Mary K. Armwood v. Wm .A. Francis dba Uncle Bill's Dinner Bell Motel and Café : Brief of Appellants

Utah Supreme Court

D. H. Oliver; Attorney for Appellants;

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

L. W. ARMWOOD, and
MARY K. ARMWOOD,

Appellants,

vs.

WILLIAM A. FRANCIS, dba
UNCLE BILL'S DINNER BELL
MOTEL AND CAFE,

Respondent.

CASE
No. 9002

APPELLANTS' BRIEF

D. H. OLIVER
Attorney for Appellants
524 Beason Building
Salt Lake City, Utah

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STATEMENT

The appellants filed their complaint in the District Court of Salt Lake County seeking damages for alleged wrongful refusal of respondent to serve them at his place of business. The complaint alleges, in substance, that respondent was doing business in Salt Lake City as an Innkeeper and that they presented themselves at said place of business for lodging and

food and that respondent's employees refused to serve them solely because of their race and color, in violation of Section 76-31-2, Utah Code, 1953, R 1,-2.

Respondent filed an answer denying that he was doing business as an Innkeeper and also denying that appellants were refused service by his employees, R 3-4.

Under discovery procedure it appears that respondent operates a Motor Court and Cafe at 861 North 2nd West Street in Salt Lake City under the Business Name of Uncle Bill's Dinner Bell Motel and Cafe, for which he was licensed by Salt Lake City, R 10,-11. The record further shows that respondent advertised said business to the public and maintained offices for the Motor Court in one of the structures on the premises in which the Cafe is located. R 14.

Upon the issues thus raised a Pre-trial was had and the issues fixed, in substance, as follows: The defendant denies that he was the operator of an Inn, denies that he, or any of his servants or employees, refused to serve plaintiffs and further denies each allegation of plaintiffs complaint. R, 16-17. Upon the issues thus formed the case was ordered set for trial December 11, 1958 at 10 o'clock A.M.

At 9:30 A.M., December 11, and without previous notice to plaintiffs or their counsel, the trial Judge directed defendant's counsel to file a motion to dismiss, which he did, R.18, and thereupon the Trial Judge dismissed the complaint. R 19.

The Order dismissing appellant's complaint is erroneous and to reverse the same, appellants rely on the following

PROPOSITIONS OF LAW

I

AN INN IS A PLACE WHERE TRAVELERS OR SOJOURNERS ARE PROVIDED WITH THE ACCOMODATIONS OF LODGING, FOOD AND DRINK.

II

APPELLANTS BECAME GUESTS OF RESPONDENT.

III

WHETHER OR NOT RESPONDENT'S CAFE WAS A PART OF MOTEL BUSINESS IS A QUESTION OF FACT TO BE DETERMINED BY THE JURY.

ARGUMENT

I

AN INN IS A PLACE WHERE TRAVELERS OR SOJOURNERS ARE PROVIDED WITH THE ACCOMODATIONS OF LODGING, FOOD AND DRINK.

Nance vs. Mayflower Tavern, 106 U 517; 150 P 2nd 773

Appeal of Sawdey, 85 A 2nd 28

Edwards vs. Los Angeles, 119 P 2nd 370

Webster's New International Dictionary

In the New Words Section of Webster's Dictionary the Word *"Motel"* is defined as follows:

> "An Inn or Hotel for automobile tourist."

In Appeal of Sawdey it is said:

> "An Inn always connotes a place where travelers or sojourners are provided with the accommodations of lodging, food and drink or, as characteristically put in the old days, entertainment."

In Edwards vs. Los Angeles, it is said:

> "An Inn is a place where the public will be received and accommodations provided to guest for compensation."

This principle was enunciated as the law of this state, by this Court, in Nance vs. Mayflower Tavern, and needs no further elaboration here.

II

APPELLANTS BECAME GUESTS OF RESPONDENT.

Dove, et al, vs. Lowden, et al, 47 FS 546

In Dove vs. Lowden, it appears that the Rock Island Railroad Company, through its Trustees, maintained and operated a hotel at Pratt, Kansas, with a lunch room attached thereto. The plaintiffs went into the lunchroom for refreshments and while there became involved in a brawl with some of defendant's employees, during the course of which, plaintiff re-

ceived serious injuries. In defending an action for damages, the defendant contended that plaintiffs were not its guest; the court held:

> "Upon the facts in this case the relationship of Innkeeper and guest arose when the plaintiff went into the lunchroom for refreshments."

but denied relief on other grounds.

III

WHETHER OR NOT RESPONDENT'S CAFE WAS A PART OF HIS MOTEL BUSINESS IS A QUESTION OF FACT TO BE DETERMINED BY THE JURY.

Odom vs. East Avenue Corp., 34 NYS 2nd 312
Commonwealth vs. Wetherbee, 101 Mass 214
Krohn vs. Sweeney, (NY) 2 Daly 200
Belvedere Hotel Co. vs. Williams, 113 A 335
Edwards vs. Los Angeles, 119 P 2nd 370
Carter vs. Alder, 291 P 2nd 111
State vs. Brown, 212 P 663
Fay vs. Improvement Co. 26 P 1099

Odom vs. East Ave. Corp. is a case directly in point. The corporation owned and operated a hotel in Rochester, New York, with a dining room and restaurant attached; the plaintiffs registered at the hotel and went to the restaurant for food but were refused because they were Negroes. Upon being sued for damages as an Innkeeper, the defendant moved to

dismiss the action on the ground that the restaurant was separate and apart from the hotel and the owner was not liable as an Innkeeper. In denying defendant's motion the court said:

> "Where restaurant was operated by Hotel Corporation in Hotel Building and was connected with the Hotel, it could not be held as a matter of law that the restaurant was not a part of the hotel."

Krohn vs. Sweeney is an early New York case wherein it is said:

> "A public house which the proprietor designates as a hotel, and at which guests are provided with lodging for uncertain periods under no express agreement, and which only differs from an ordinary hotel in having a refectory (dining hall) on the premises where guests are at liberty to get their meals, is an Inn, and the proprietor is an Innkeeper, with all the responsibilities attaching to such character as respects guests received and accommodated with lodging."

In Commonwealth vs. Wetherbee, the defendant conducted what he called A Boarding House. He actually kept a house wherein he had regular boarders, regular roomers and advertised for transit trade and actually had accommodations for and did accommodate travelers with their teams. In upholding a conviction for operating an Inn without a license, the Court said:

> "A man may be an Innkeeper although he keeps an inn imperfectly, or combines this employment with others, if he is prepared and holds himself out to the public as ready to entertain travelers, strangers, and transit guest with their teams and carriages after the manner usual to Innkeepers, although he may sometimes make special bargains with his customers, may not keep his house open at night, and may not keep the stables for the horses at his own house."

Fay vs. Pacific Improvement Co. is an early California case wherein the defendant operated a Summer Resort on an out-of-the-way beach on the Pacific Ocean. The premises were enclosed by a fence which was closed at night. In holding the defendant liable as an Innkeeper for loss of property, the court said:

> "One who keeps a house for all who choose to visit it, and extends a general invitation to the public to become guest is an Innkeeper and is liable as such, though the house is situated on closed grounds."

In Belvedere Hotel Company vs. Williams, the Company owned and operated a Hotel at the corner of Charles and Chase Streets in Baltimore and used an adjoining building as a storeroom for the Hotel. The Company leased the hotel Barber Shop to Williams together with all tonsorial concessions of the Hotel. The company became dissatisfied with the Barber and tried to terminate the lease and, after all efforts at negotiations failed, the company cleared space in the storeroom and opened a Barber Shop in compe-

tition with Williams. In sustaining an injunction against the company, the court said:

> "There was testimony to the effect that the main Hotel Building is located at the SE corner of Charles and Chase Streets and that the property, No. 1023 North Chase Street adjoins it on the South; that there is direct communication between the Hotel and No. 1023 Chase Street through a doorway opening on what is called the Summer Gardens and that there was direct communication between the lobby of the hotel and the Barber Shop."

It was held that the Storeroom was a part of the Hotel. To the same effect is Carter vs. Alder, and cases therein cited.

In Edwards vs. Los Angeles, the court denied an injunction against the City, restraining it from collecting Business taxes with the following language:

> "Structures placed side by side, or one in the rear of another, or in a circle or semi-circle, do not lose their identity as hotel, rooming house or apartments, merely by bestowing upon them a different appellation, if in fact they are used to lodge the public."

In State vs. Brown, the Supreme Court of Kansas said:

> "A restaurant keeper may have rooms for rent to his customers, or may accept roomers by the week, thus making his establishment a hotel . . ."

CONCLUSION

We have pointed out herein what an Inn is; that the appellants were guests of Respondent and that the proposition of whether or not his Cafe was a part of his Motel business is a question of fact which should be determined by a jury, from all the evidence under proper instructions from the court, and in this we respectfully submit that the Order dismissing Appellant's complaint is erroneous and should be reversed and remanded with costs of this appeal to appellants.

Respectfully submitted,

D. H. OLIVER
Attorney for Appellants
524 Beason Building
Salt Lake City, Utah